

REMARKS

This is a full and timely response to the Office Action of January 26, 2009. Reconsideration and allowance of the application and all presently pending claims are respectfully requested.

Claims 1-8, 11-17, and 19-25 are pending in this application. Claims 9, 10, and 18 were previously canceled. Claims 15, 19, and 23 are amended. Claims 22 and 26-35 have been cancelled without prejudice. The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims. Applicant believes that no new matter has been added by the amendments and that a new search is not necessary.

Applicants thank the Examiner for indicating that claims 1-8, 11-14, 24, and 25 are in condition for allowance.

DECLARATION

A Declaration, attachment A, under 37 C.F.R. 1.132 is submitted herewith to correct certain dates in the Declaration filed October 24, 2008. Specifically, "1978" is replaced with "1979" in the first paragraph; the phrase "I was promoted to Assistant Professor of Medicine in 1997" has been removed; and "1999" is replaced with "2000".

Claim Rejections

35 U.S.C. §112, first paragraph, scope of enablement

Claims 15-17, 19-22, and 27-33 are rejected under 35 U.S.C. 112, first paragraph. The Office Action asserts that the Specification enables treatment of the group of cancers selected from the group consisting of breast, colon, ovarian, prostate, and chronic myelocytic leukemia (CML). Applicant respectfully submits that support is also shown for treatment of leukemia, melanoma, CNS, and lung cancer at pp. 28 and 29 of the Specification:

Table 1

Compound	leukemia	K562(CML)	NSCLC	SCLC	Colon	CNS
Formula II	-5.41	-6.66	-4.97	-4.79	-6.12	-5.02
Formula III	-5.43	-6.76	-5.04	-4.73	-6.3	-5.05
Formula IV		-6.7				

Compound	Melanoma	Ovary	Renal	Prostate	Breast
Formula II	-4.91	-5.0	-4.91	-5.17	-4.75
Formula III	-4.95	-4.99	-4.97	-5.88	-4.84

Note: Values in the table refer to the $-\text{Log}(G150)$ as a molar concentration.

If $-\text{Log}(G150) > -4.5$ then the compound is likely to be inactive.

If $-\text{Log}(G150) > -5$ and < -4.5 then the compound is likely to have some *in vitro* activity.

If $-\text{Log}(G150) < -5$ then the compound is considered to have *in vitro* activity.

*K562 is a specific leukemia cell line for CML that over expresses the abnormal protein tyrosine kinase.

** NSCLC is a non small cell lung cancer

***SCLC is a small cell lung cancer

Applicant has amended claim 15 to recite the specific cancers supported in Table 1 above. Accordingly, the rejection is moot in light of the amendment, and Applicant respectfully requests this rejection be withdrawn.

35 U.S.C. §112, first paragraph, written description

Claims 26-34 are canceled without prejudice, and Applicants preserve the right to file and pursue one or more continuing applications covering the canceled subject matter. Applicants traverse the rejection of claim 26, and submit that it is Applicants' understanding that an integer includes zero and the specification notes that "n" is an integer. However, in an effort to expedite issuance of the allowed subject matter, claims 26-34 have been canceled.

Claim Objections

Duplicate Claims

Claim 35 is objected to as being a substantial duplicate of claim 11. This objection is rendered moot in light of the cancellation of claim 35.

Amendment After Final Office Action

Applicants are not barred from submitting an amendment after a Final Office Action issues. Any amendment made after a Final Office Action, after a Notice of Appeal has been

filed, but prior to the filing of an appeal brief, which either (1) places an Application in condition for allowance or (2) places an Application in better form for appeal may be entered at the discretion of the Examiner. An amendment filed after a Final Office Action but before the date of filing an appeal may be entered upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(b)(2). MPEP 714.13.

Applicants submit the amendments to claims 15, 19, and 23 places this Application in condition for allowance, or at the least places this Application in better form for appeal. Specifically, the amendment to claim 15 specifies the types of tyrosine kinase-dependent cancers to be treated. This amendment does not substantively alter the claimed subject matter. Furthermore, claims 19 and 23 are amended to depend from claim 15. These amendments do not substantively alter the claimed subject matter. Accordingly, Applicant submits the amendment to claim 15 would require no more than a cursory review by the Examiner.

These amendments were not presented earlier because Applicant believed each prior response placed this Application in condition for allowance, at least for the reasons set forth in those responses. Accordingly, entry of the present amendment as an earnest attempt to advance prosecution to allowance or to reduce the number of issues for appeal is requested under 37 CFR 1.116(b)(2).

In the event that the Office declines to enter the present amendment, and (i) any portion of the present amendment would place some of the claims in better form for appeal if a separate paper were filed containing only such amendments or (ii) any proposed amendment to any claim would render that claim allowable, Applicant respectfully requests that the Office inform applicant pursuant to MPEP §714.13.

CONCLUSION

In view of the foregoing remarks and amendments, reconsideration of the application, withdrawal of the outstanding rejections, allowance of all of the pending claims 1-8, 11-14, and 19-25, and the issuance of a Notice of Allowability are respectfully solicited.

Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C.B. Linder', written over a horizontal line.

Christopher B. Linder; Reg. No.: 47,751

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.
Suite 1500
600 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500